

AI at work — current uses and practical guidance

**Andrew Kimble, Partner,
Dan Fawcett, Legal Director,
Katie Simmonds, Managing
Associate, and Jenny Gibbs,
Associate, at Womble Bond
Dickinson, explore current
uses of AI at work, how
the UK’s ‘pro-innovation
approach’ to regulation will
impact the advancement of
AI in the workplace, and
offer practical tips for those
implementing AI at work**

Andrew Kimble is leading a Workshop on the Implications of the Use of New Technologies in the Workplace at the [22nd Annual Data Protection Compliance Conference](#), taking place in London and online on 4th-6th October 2023. See the [website](#) for further details.

The deployment of AI technologies in the workplace is a double-edged sword. On the one hand, AI can be used to improve workplace safety, automate elements of the employment cycle and offer new roles focussing on the development and implementation of AI technologies. On the other hand, the adoption of AI raises important bias and privacy concerns. Business leaders are experiencing pressure from all angles — customers, employees and competitors — to accelerate the deployment of AI technologies, to avoid being left behind.

How is AI currently being used in the workplace?

Examples where AI is being used in the workplace right now include:

Recruitment: 73% of respondents to Eightfold AI’s Talent Survey are already utilising AI for ‘recruitment and hiring’. Examples include online testing, analysis of behaviours during interviews and reviewing and providing feedback on applications.

Performance management: 72% of employers are utilising AI as part of their employee performance management processes. This can help organisations to identify inefficiencies and to suggest improvements.

Routine tasks: There is an increase in routine and repetitive tasks being dealt with by AI technologies, such as live meeting transcription and automated document review tasks.

Crucially, looking ahead, 92% of employers plan to increase their use of AI in at least one area of HR in the next 12-18 months.

Generative AI in the workplace

The advancement of generative AI technologies, like ChatGPT, will continue to accelerate the deployment of AI in the workplace.

The practical application of generative AI is broad and versatile when it comes to creating human like

content: from the drafting of code, to detailed research tasks, to more creative assignments such as the preparation of poetry and generation of videos. ChatGPT highlighted the disruptive nature of AI, reaching over one million users within just five days of its launch. Simultaneously, the advancement of generative AI has also highlighted the key risks of harm to individuals that these technologies could potentially present when deployed at scale.

The advancement of generative AI, which is trained on an unprecedented large volume of public data, increases the risk of bias/discrimination in the workplace, and raises a number of privacy concerns. These concerns were highlighted by the Italian data protection regulator’s temporary ban on ChatGPT earlier this year.

The UK’s ‘pro-innovation approach’ to regulating AI

The UK government’s 2023 Spring Budget recommended a ‘step-change in the UK’s regulatory approach to AI’. As part of this change, the government published its [AI White Paper](#) (‘the White Paper’) which has been described as a ‘pro-innovation approach to AI regulation’. The outlined AI framework is underpinned by five principles (which are unlikely to be specifically set out in the final statute):

- safety, security and robustness;
- appropriate transparency and explainability;
- fairness;
- accountability and governance; and
- contestability and redress.

As currently drafted, the burden of enforcing the AI regulatory framework will fall on existing regulators. We already have regulatory guidance in the UK in the HR/employment space, including:

- the Information Commissioner Office’s (‘ICO’) [AI-specific data protection compliance guidance](#),

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which focusses on the need to comply with principles of data protection by design and default and ensuring that these are engrained into AI technologies; and

- the Equality and Human Rights Commission’s (‘EHRC’) guidance on the use of AI by public bodies. While this guidance is not specific to the workplace, it does cover key use cases of AI in the workplace, such as recruitment. The EHRC’s guidance provides practical examples of how AI systems may inadvertently be resulting in discriminatory decisions and outcomes. There is also a checklist which provides helpful recommendations on how organisations can demonstrate that the core principle of equality has been engrained into the AI technology.

The White Paper states that the EHRC and ICO will be supported and encouraged to work with the Employment Agency Standards Inspectorate (‘EASI’) and other regulators and organisations in the employment sector to issue joint guidance. We therefore anticipate greater collaboration between regulators and further guidance for employers to comply with.

Regulators have asked the government for further measures to support the 5 principles in the White Paper. This emphasises that they have concerns about how their ability to enforce the principles will work in practice, with no further legislation from the government bolstering their enforcement powers. There is a further

consultation on the White Paper with a feedback deadline of 21st June 2023, so further developments will likely be announced in the coming weeks.

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- introduce a statutory duty for employers to meaningfully consult with employees and trade unions before introducing AI into the workplace;
- strengthen existing equalities law with a view to preventing discrimination by algorithm. This would include: amending the Data Protection Act 2018 to explicitly state

The AI workplace draft Bill

A Private Members’ Bill (‘the Bill’) has been introduced into the House of Commons. Whilst the precise content of the Bill has yet to be published, its purpose is to protect the rights of individuals who will be working alongside AI, and to preserve those rights for future generations.

The Bill is centred around three key principles:

- discrimination: everyone should be free from discrimination in the workplace;
- important decisions: workers have the right to have a say in the big decisions that affect them; and
- personal data: we all have a right to understand how our data are being used at work.

If the Bill is enacted, it would:

- establish that ‘high-risk’ AI use should be targeted for further regulation and require sector-specific guidance on the meaning of high-risk AI;

that discriminatory data processing would be unlawful; amending the Employment Rights Act 1996 to create a statutory right that workers should not be subject to detrimental treatment as a result of the processing of inaccurate data; reversing the burden of proof in discrimination claims that challenge decisions made by AI; and making equality impact audits a mandatory part of data protection impact assessments, which employers would also be required to publish;

- establish a universal and comprehensive right to human review of high-risk decisions made by AI, as well as a right to human contact when high-risk decisions are being made; and
- establish a right for workers to disconnect from work.

Some of these proposals touch on what are already complex areas of law (for example the burden of proof in discrimination cases) and the detail of any draft bill would need to be carefully scrutinised to work out how effective any protection may be.

Additionally, whilst the Bill aims to protect employees, the speed at which legislation comes into force will likely be trailing behind the pace at which organisations implement AI technologies. The second reading of the Bill is not until 24th November 2023. It is also unclear at this stage whether the Bill will have the support of government, so the Bill may never come to pass.

First global summit on ‘AI Safety’

The UK will also host the first global summit on ‘AI Safety’, which will further shape the UK’s approach to regulating AI. While the date for the summit is yet to be confirmed, it will have a focus on harnessing AI “for good” and ensure that AI is “developed and used in a way that is safe and secure”.

What are organisations doing now?

In the meantime, organisations are taking AI best practice into their own hands, with the introduction of ‘Chief AI Officer’ roles to help with the application of newer technologies and ensure AI technologies are integrated within workforces appropriately. This role would bridge the gap between technical function and understanding the outputs of that technology, the legal risks and the ethics that must be considered. This is the journey that we are seeing legal and IT teams taking together.

This trend is likely to continue as we see the new AI Regulation come into force in the EU, alongside the expected sector specific AI guidance in the UK. As for how discrimination is approached, not only will these instances continue to be subject to scrutiny under The Equality Act, but we’re likely to see sector specific guidance from existing regulators including the EHRC and ICO on how to address this core issue.

If employees pursue claims alleging that they have been discriminated against as a result of the application of AI, then the Employment Tribunals hearing those claims may need access to information on how the AI packages work. Such cases may therefore involve complex evidential issues and employers may be in a better position to defend them if they have taken the time to gain a clear understanding of how the AI they are using works.

The Chief AI Officer (or equivalent) will be responsible for the awareness and adherence to any guidance. It won’t be enough for organisations to place sole responsibility on the technology or a third party; the expectation will be that each organisation has actively completed the necessary due diligence to understand the potential impact of how AI will be used before it is adopted.

Practical guidance

Employers can implement a range of policies and practices to balance the use of AI and other emerging technol-

ogies with the aim of protecting individuals’ data and complying with data protection laws and the emerging AI regulatory landscape. These include:

- conduct Data Protection Impact Assessments for any AI projects that involve processing personal data, especially if they are likely to result in high risk to the rights and freedoms of individuals;
- consider the data outputs produced by AI, and establish whether they are sufficiently accurate and objective, making necessary adjustments where required;
- implement appropriate technical and organisational measures to ensure the security, accuracy, and quality of the personal data processed by AI systems, such as encryption, pseudonymisation, data minimisation, and regular testing;
- establish clear policies and procedures for using AI in the workplace, such as a code of conduct, an ethical framework, and a governance structure. These should reflect the principles embodied in AI-relevant legislation, such as lawfulness, fairness, transparency, accountability and respect for human dignity and autonomy;
- update current employee privacy notice so employees are kept fully up to date with how AI will be used, ensuring transparency within your business. This will be particularly key where AI will be processing personal data relating to your employees;
- ensure that someone within the organisation is responsible for AI implementation and use to ensure the proper application of policies and legislation and, ultimately, who is responsible for taking action when things go wrong. This may be a Chief AI Officer, or an expansion of the role of a senior technology and/or human-resources role; and
- avoid solely relying on AI, as it is a technology that is still developing.

Andrew Kimble leads a training course on [Data Protection in the Workplace](#), available by eLearning, live streaming and in person, with upcoming dates in London and Edinburgh. See the [website](#) for further details.

Andrew Kimble
Jenny Gibbs and
Katie Simmonds

Womble Bond Dickinson
 andrew.kimble@wbd-uk.com
 Jenny.gibbs@wbd-uk.com
 katie.simmonds@wbd-uk.com
